

HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 954 of 2006

1. Abdul Gani son of Sri Buddhu,
Fine Tailors, Old Seemapuri
 2. Mehrun Nisha alias Chunni wife of Abdul Gani
 3. Imran alisas Guddu son of Sri Abdul Gani
All resident of 4/483, Khichripur,
Delhi
- Applicants

Versus

1. Chief Judicial Magistrate, Nainital
 2. Kamaluddun son of Abdul Gafoor
Resident of Chartan Cottage Compound
P.S. Mallital, Nainital
- Opp. Party

Dated: 28.11.06

Hon'ble Rajesh Tandon, J.

Heard Sri B.K. Gupta counsel for the applicants and learned A.G.A. for the respondents.

By the present application under section 482 Cr.P.C. the applicants have challenged the criminal proceedings against the applicants in Case No. 65 of 2006, Kamaluddin vs. Abdul Gani and others under section 452, 323, 504, 506 I.P.C. pending in the Court of Chief Judicial Magistrate, Nainital.

According to the applicants, applicants have close relations with the opposite party no. 2, Kamaluddine. The daughter of the applicant no. 1 and 2 and sister of the Imran alias Guddu namely Ruby was married with the son of the opposite party no. 2 namely Sri Rehan Udin and have two grown up children with the wedlock. Respondent no. 2 filed a complaint under section 156(3) Cr.P.C. before the Chief Judicial

Magistrate, Nainital and on the direction of the Chief Judicial Magistrate a case was registered in P.S. Mallital, Nainital. After investigation the Police submitted report that no incident as alleged by the complainant has ever taken place. After receiving the report the Chief Judicial Magistrate, Nainital directed that a criminal case be registered on the basis of complainant and as such Criminal case No. 65 of 2006 was registered in the Court under section 452, 323, 504 and 506 I.P.C. and after recording statement of the witnesses under sections 200 and 202 Cr.P.C. summons were issued to the applicants.

So far as the instant petition under section 482 Cr.P.C. is concerned no interference can be made under section 482 Cr.P.C. as both the parties will be at liberty to lead the evidence in view of the observations made by the Apex Court in the case *Medchl Chemical and Pharma (P) Ltd. Biological E. Ltd. and others* (2003)3 SCC 269.

Since the trial has to take place for the offences under aforesaid sections, therefore, without expressing any opinion on the merits of the case, I direct the applicants to appear before the Magistrate concerned the court shall permit them to file appearance bonds to the satisfaction of the Magistrate concerned for their regular appearance in the case.

Subject to the observations made above, application under Section 482 Cr.P.C. is disposed of.

(Rajesh Tandon, J.)

Dated: 28.11.2006

*Dhyani